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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1967

No. 1308

CORLISS LAMONT, on behalf of himself and all others similarly situated,

*Petitioner,*

*—against—*

COMMISSIONER OF MOTOR VEHICLES and R. L. POLK & CO.,

*Respondents.*

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

### OPINIONS BELOW

The opinion of the Court of Appeals for the Second Circuit, reported at 386 F. 2d 449, is reprinted in the appendix to this brief at pages 1a-2a. The opinion of the District Court, reported at 269 F. Supp. 880, appears in the appendix to this brief at pages 3a-11a.

The judgment of the United States Court of Appeals for the Second Circuit was entered on December 12, 1967. Petitioner invoked the jurisdiction of this Court under 28 U. S. C. § 1254(1). The jurisdiction of the District Court was invoked by Petitioner under 28 U. S. C. §§ 1331, 1343(3), 2201, 2202, 2281, 2284, 42 U. S. C. § 1983, and

under the First, Fourth, Fifth, Ninth, and Fourteenth Amendments to the Constitution of the United States.

## STATUTES INVOLVED

Involved herein are § 202(3) and § 401(2) of the New York Vehicle and Traffic Law, and 28 U. S. C. §§ 2281 and 2284, the texts of which are reprinted in the appendix to this brief at pages 12a-15a.

## QUESTION PRESENTED

Petitioner does not accurately set forth the question presented. The actual question presented is:

Were the Courts below correct in holding that no substantial constitutional question was presented by Petitioner's claim that his "right of privacy" is violated by the sale, pursuant to state statute, of motor vehicle registration information where:

(a) the motor vehicle registration forms in question are public records;

(b) the information contained in such records is neither sensitive nor intimate; and

(c) the "irreparable harm" claimed by Petitioner consists solely of the alleged receipt of advertisements by mail and of other commercial solicitations?

## STATEMENT OF THE CASE

In this action, Petitioner seeks declaratory and injunctive relief, alleging that § 202(3) of the New York Vehicle and Traffic Law is invalid under the United States Constitution. The District Court held that Petitioner's claims were not substantial and dismissed the complaint. The

Court of Appeals for the Second Circuit unanimously affirmed the dismissal.

Only Petitioner's complaint was before the District Court on the application for a three-judge court. Petitioner advised the District Court on oral argument that he did not press his claim for preliminary injunctive relief. Both Petitioner and Respondent R. L. Polk & Co. then advised the Court that it should consider only the complaint and not the affidavits submitted in support of and in opposition to the claim for preliminary injunctive relief. Thus, insofar as Petitioner's "statement of the case" exceeds the allegations of his complaint, it is irrelevant for the purposes of this petition and no useful purpose would be served by a rebuttal. Such a detailed rebuttal is, in any event, unnecessary since the insubstantial nature of Petitioner's claim is apparent on its face.

Section 202(3) of the New York Vehicle and Traffic Law, challenged herein by Petitioner, has been in force in substantially the same form since 1940. That section permits the New York Commissioner of Motor Vehicles to contract with the highest responsible bidder to furnish copies of all motor vehicle registrations.*

The complaint alleges that this action is brought on behalf of Petitioner and all other registered motor vehicle owners in the State of New York. Respondents are the New York Commissioner of Motor Vehicles (hereinafter sometimes referred to as "the Commissioner") and R. L. Polk & Co. ("Polk"), a company alleged to be engaged, among other things, in publishing directories. The complaint alleges that the Commissioner has sold a current list of names of registered owners of New York motor vehicles to Polk, pursuant to § 202(3), and such information has

*A copy of the New York registration form is reprinted in the appendix to this brief, at pp. 16a-17a.

been used by Polk, directly or indirectly, to solicit the purchase of merchandise through the mails, by telephone or in person. Petitioner further alleges that these actions, and the provisions of § 202(3), violate the right of privacy of Petitioner and other registrants and deprive them of their liberty and property, under the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution. Petitioner further contends that such actions have resulted in "considerable annoyance, inconvenience and damage to the plaintiff and other registrants by reason of the large volume of advertising and crank mail and other solicitation to which they are subjected," and that the injury thus sustained is "irreparable." Petitioner's complaint is reprinted in the appendix to this brief at pages 18a-21a.

Petitioner herein does not seek to invalidate the New York statutory provisions which make such registration forms public records, but only the section permitting the sale of registration information in bulk.

## ARGUMENT

### REASONS WHY THE WRIT SHOULD BE DENIED

The instant case presents no issue which merits the attention of this Court. Petitioner, unable to show any substantial injury or to cite any authority for his position, advances instead the sweeping proposition that the United States Constitution prohibits any state action which could be said to intrude upon Petitioner's "privacy". This argument was, however, squarely rejected by this Court at the present Term in *Katz* v. *United States*, 389 U. S. 347, where the Court held, at page 350:

> "Secondly, the Fourth Amendment cannot be translated into a general constitutional 'right to privacy.'

> That Amendment protects individual privacy against certain kinds of governmental intrusion, but its protections go further, and often have nothing to do with privacy at all. Other provisions of the Constitution protect personal privacy from other forms of governmental invasion. But the protection of a person's *general* right to privacy—his right to be let alone by other people—is, like the protection of his property and of his very life, left largely to the law of the individual States." (Original emphasis)

Moreover, there has not been, upon the facts alleged in the complaint, any invasion of Petitioner's "privacy." The information contained in the official motor vehicle registration form, such as name, address, make and model of vehicle, etc., is neither intimate nor confidential.* The registration data does not include any information related to religious or political affiliation, or any other sensitive matter like that involved in *NAACP* v. *Alabama*, 377 U. S. 288, and *Bates* v. *City of Little Rock*, 361 U. S. 516, cited at page 8 of the Petition.

The registration forms in question are, in any event, public records. Any person may obtain a copy of the data in question by paying the statutory fees, without any showing of cause or explanation of why the information is sought. New York Vehicle and Traffic Law § 401 (2). *Matter of Stenstrom* v. *Harnett*, 131 Misc. 75 (Sup. Ct. Albany Co. 1927), *aff'd* 224 App. Div. 127 (3d Dept. 1928), *aff'd* 249 N. Y. 606 (1928), incorrectly cited at page 3 of the Petition for the proposition that a showing of cause

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*Petitioner attempts to create a contrary impression by his reference, at Petition page 3, to a question pertaining to "certain criminal offenses." The section referred to by Petitioner inquires only as to traffic offenses, and need not be answered at all unless the applicant is requesting a special license number.

is required, actually holds the direct opposite. In *Harnett*, the New York court expressly held, at 131 Misc. 77:

> "In the case of public records, strictly speaking, all citizens have a right to resort to them, irrespective of their motives or interest. They may examine them to satisfy mere curiosity, or they may take transcripts from them for sale. (*People ex rel. German-American Loan & Trust Co.* v. *Richards*, 99 N. Y. 620.)"

*Accord, Blandford* v. *McClennan*, 173 Misc. 15, 18 (Sup. Ct. Erie Co. 1940).* Thus, Section 202(3) is in furtherance of the public policy of the State of New York to make not only motor vehicle registration records, but public records generally, available to any member of the public. (*See e.g.*, Public Officers Law § 66; Education Law § 146; *Mtr. of New York Post Corp.* v. *Leibowitz*, 2 N. Y. 2d 677, 686 (1957); *Fox* v. *City of New York*, 28 A. D. 2d 20 (1st Dept. 1967); *Matter of Werfel* v. *Fitzgerald*, 23 A. D. 2d 306 (2d Dept. 1965).)

It has long been established in other jurisdictions that such vehicle registration records are subject to bulk copying and sale. Despite Petitioner's attempt to imply (Petition, page 6) that such bulk sales are a recent development, dependent upon advances in computer techniques, similar operations have been carried on for more than thirty years. The right of a direct mailing company to make copies in bulk of vehicle records was expressly upheld in *Direct Mail Service* v. *Registrar of Motor Vehicles*, 5 N. E. 2d 545,

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*In this connection, it is significant to note that the Congress by the Act of July 4, 1966, 80 Stat. 250, amending Section 3 of the Administrative Procedure Act, has expanded the availability of federal agency records by now placing the burden upon the agency to justify a refusal to disclose such records.

296 Mass. 353 (1937), where the Court said at 5 N. E. 2d 546:

> "It is common knowledge that much use is made of public records for reasons having nothing to do with any present problem of the person examining them. Lists of conveyances, attachments, bankruptcies, building permits and other matters having their sources in the public records are regularly published in commercial journals which are sold to business men and to the public generally. Such use of the material contained in records often enhances their value to the community. We cannot believe that the Legislature intended to give to the custodian of a public record power to inquire of applicants for inspection as to the use which they intend to make of the information to be obtained or the motives which prompted them in seeking it. See Shea v. Parker, 234 Mass. 592, 126 N. E. 47. Nor do we see how the right to inspect records can be confined to certain selected entries or where the line can be drawn short of allowing inspection in proper time and manner of all the records, if inspection of all is desired. The right to inspect commonly carries with it the right to make copies without which the right to inspect would be practically valueless. Varney v. Baker, 194 Mass. 239, 241, 242, 80 N. E. 524, 10 Ann. Cas. 289; Powelson v. Tennessee Eastern Electric Co., 220 Mass. 380, 107 N. E. 997, Ann. Cas. 1917A, 102; Shea v. Parker, 234 Mass. 592, 126 N. E. 47; People v. Cornell, 47 Barb. (N. Y.) 329; Clay v. Ballard, 87 Va. 787, 13 S. E. 262. We see no reason why the right to make copies is not coextensive with the right to inspect. We believe that in general the public interest will be best served by the largest freedom in

> the use for lawful purposes of public records kept at the public expense. We conclude, therefore, that the rulings and order of the single justice were right."

*Accord, State* v. *Brown,* 345 Mo. 430, 134 S.W.2d 28 (1939).

The function performed by the state in supplying motor vehicle registration information in bulk was aptly described by the court below when it stated (at 269 F. Supp. 883-4):

> "The information sold by the Commissioner is not vital or intimate. It is, moreover, in the category of 'public records,' available to anyone upon demand. See Vehicle and Traffic Law § 401(2). Indeed, questions more troublesome than plaintiff's might arise if the State adopted a policy of 'privacy' or 'secrecy' with respect to such information. What the State has done in practical effect is to tap a small source of much-needed revenue by offering a convenient 'packaging' service. This may not be the most inspired kind of government function, although it may be noted that eighteen other States appear to have adopted similar practices. The point of importance, whatever aesthetic or other judgments might be prompted by this activity, is that it reflects a rational and allowable balancing of values by the elected representatives of the people." [Footnotes omitted.]

Clearly the inspection, copying and sale of motor vehicle registrations, individually or in bulk, does not infringe on petitioner's freedom of speech, violate due process or constitute an invasion of any "right of privacy". Rather, it reflects a legislative determination to make information

contained in governmental records accessible and available to the public and, at the same time, obtain revenue.*

Appellant also contends here that the sale of a copy of his motor vehicle registration by the Commissioner to Polk has resulted in his receiving so-called "crank" mail and other commercial solicitations, thereby causing him annoyance and inconvenience. Lacking any clear basis for jurisdiction, but apparently hoping to find support somewhere in the Constitution or the statutes, appellant cites seven statutes as well as the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the United States Constitution.

The cases relied on by appellant, however, rather than lending support to his novel claim, demonstrate instead that the claim is frivolous and insubstantial. The "privacy" decisions cited by appellant relate to physical intrusions on the person or dwelling, invasions of First Amendment freedoms or other equally grievous injuries. Thus, *Camara* v. *Municipal Court,* 387 U. S. 523 (cited at Petition, p. 8) involved an actual entry and search of the defendant's premises. Several of the other cases relied upon by Petitioner involved compulsory disclosure of information as to political associations involving threats of reprisal and consequent restrictions upon freedoms of speech and association. *Bates* v. *City of Little Rock,* 361 U. S. 516; *NAACP* v. *Alabama,* 377 U. S. 288 (cited at Petition, p. 8). *Sweezy* v. *New Hampshire,* 354 U. S. 234 (Petition, p. 8) involved an excessively broad legislative investigation with a consequent threat to academic freedom. *Boyd* v. *United States,*

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*Eighteen states have statutes similar to Section 202(3) of the New York Vehicle and Traffic Law and by statute in all states, with the exception of Kentucky, where no statute could be found, motor vehicle registrations are public records (Appendix, p. 9a). As judge Frankel noted, "This substantially uniform state practice is not decisive, but is another item of some weight against plaintiff's constitutional theory . . . ." (Appendix, p. 9a).

116 U. S. 616, was a case of self-incrimination involving the compulsory production by the defendant of his books and records in a customs fraud proceeding.

Of the cases cited by Petitioner, the closest to the present facts, *Public Utilities Commission* v. *Pollak,* 343 U. S. 451 (Petition, p. 8), is squarely contrary to his position here. That case held that the broadcasting on municipal streetcars of music and commercial announcements did not infringe the constitutional rights of the passengers. *A fortiori,* there is no such infringement in this case. Here appellant, if he chooses, can readily avoid exposure to the commercial solicitations complained of by the minimal effort involved in throwing away unwanted mail, hanging up the telephone, or turning away alleged door-to-door commercial solicitations. As the District Court correctly observed, at 269 F. Supp. 883:

> "The mail box, however noxious its advertising contents often seem to judges as well as other people, is hardly the kind of enclave that requires constitutional defense to protect 'the privacies of life.' The short, though regular, journey from mail box to trash can—for the contents of which the State chooses to pay the freight when it facilitates the distribution of trash—is an acceptable burden, at least so far as the Constitution is concerned. And the bells at the door and on the telephone, though their ring is a more imperious nuisance than the mailman's tidings, accomplish more peripheral assaults than the blare of an inescapable radio."

In an effort to lend some semblance of substantiality to his position, Petitioner has noted (Petition, p. 10) the pendency of one other law suit raising a similar claim. *Chapin* v. *Tynan,* No. 150994, Superior Court of Hartford

County, Connecticut, cited at Petition, page 10. However, since the filing of the Petition herein, the Connecticut court has rendered a decision dismissing the *Chapin* action on the merits.* The Court in *Chapin*, after noting the trivial nature of the "inconveniences and annoyances" alleged by plaintiff therein, squarely rejected the Constitutional argument, noting that:

> "The record is replete with evidence affording sufficient grounds for the existence of the laws under which the commissioner acted, particularly with reference to his contracting with the company. First of course is the tapping of a source of revenue, although it may not be the most inspired type of governmental function. *Lamont* v. *Commissioner of Motor Vehicles*, supra, 883. Other statistical data compiled by this 'in bulk' furnishing of names has, as disclosed by the company's experience, potential or actual value in instant recall of defective vehicles potentially dangerous to the public, determination of parts inventory, publication of city directories, assistance to governmental agencies and law enforcement officials. Indeed the plaintiff concedes a segment of the public welcomes the mail which he resents. Furthermore, this 'packaging' method is more convenient for the commissioner rather than the manual preparation of the records."

Petitioner's claim is, in fact, not a matter of "privacy" at all. There is here no unlawful dissemination of confidential or private information. There is, of course, no contention that Petitioner's person, premises, or effects have been subjected to any form of search. The gravamen

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*A copy of the opinion in *Chapin* v. *Tynan*, not yet reported, is reprinted in the appendix to this brief at pages 22a-31a.

of his complaint is simply that he is irritated at receiving unwanted mail or other commercial solicitation. Petitioner contends, in effect, that the United States Constitution absolutely prohibits any form of state action which might annoy Petitioner or disturb his complete mental repose. The courts below were clearly correct in holding this claim insubstantial.

Petitioner attempts to lend an appearance of substance to his case by general citations to articles which have discussed the dangers of unrestricted computer use of political, financial, and other highly sensitive data. Although petitioner repeatedly tries to obscure the fact, the only data involved here is that contained in public records which are available to anyone on request.

Finally, appellant's reliance on *Breard* v. *Alexandria*, 341 U. S. 622, is misplaced. *Breard* involved the right of a local government to *limit* house-to-house solicitation for certain commercial purposes. The court, in upholding the ordinance in question, observed (pp. 631-632) that "The usual methods of solicitation—radio, periodicals, mail, local agencies—are open." The holding of *Breard* is simply that legislative bodies may validly impose reasonable regulations upon certain types of commercial solicitation. Nothing in that case supports appellant's position that any such solicitation violates his constitutional rights.

The claims advanced by plaintiff with respect to freedom of speech and due process are equally insubstantial. The instant case involves merely the use of information which is neither sensitive nor intimate, which is already a matter of public record, and which already can be obtained by anyone through public sources without any intrusion into private affairs. The commercial solicitation complained of lacks any captive quality and has not been limited by the legislature.

As Judge Frankel concluded (269 F. Supp. 884):

> "His claim is in an area where there is no invidious discrimination, no problem of a wrong unreachable at the polls, no suggestion of an affliction confined to a relatively helpless minority. Cf. Reynolds v. Sims, 377 U. S. 533, 553, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964); West Virginia State Board of Education v. Barnette, 319 U. S. 624, 638, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943). His alleged injury, shared with what is probably a majority of the electorate, results from a judgment by the State which appears to be well within its 'vast leeway in the management of its internal affairs.' Sailors v. Board of Education, 387 U. S. 105, 109, 87 S. Ct. 1549, 1553, 18 L. Ed. 2d 650 (1967)."

In the light of the foregoing authorities, the District Court was clearly correct in dismissing the complaint as insubstantial. *Ex parte Poresky*, 290 U. S. 30. Where no substantial constitutional question is raised, the plaintiff is not entitled to have a three-judge court convened. *Offermann* v. *Nitkowski*, 378 F. 2d 22 (2d Cir. 1967); *Utica Mutual Insurance Company* v. *Vincent*, 375 F. 2d 129 (2d Cir. 1967), *cert. denied*, 389 U. S. 839; *Powell* v. *Workmen's Compensation Bd. of State of New York*, 327 F. 2d 131 (2d Cir. 1964); *Bell* v. *Waterfront Commission of New York Harbor*, 279 F. 2d 853 (2d Cir. 1960), cited with approval in *Bailey* v. *Patterson*, 369 U. S. 31, 33; *Sarisohn* v. *Appellate Div., Second Dep't., S. Ct. of St. of New York*, 265 F. Supp. 455 (E. D. N. Y. 1967). As stated by the Court in *Bailey*, at 369 U. S. 33:

> "Section 2281 does not require a three-judge court when the claim that a statute is unconstitutional is wholly insubstantial, legally speaking non-

existent. *Ex parte Poresky*, 290 U. S. 30; *Bell* v. *Warterfront Comm'n*, 279 F. 2d 853, 857-858. We hold that three judges are similarly not required when, as here, prior decisions make frivolous any claim that a state statute on its face is not unconstitutional. * * * The reasons for convening an extraordinary court are inapplicable in such cases, for the policy behind the three-judge requirement—that a single judge ought not to be empowered to invalidate a state statute under a federal claim—does not apply. The three-judge requirement is a technical one to be narrowly construed, *Phillips* v. *United States*, 312 U. S. 246, 251. The statute comes into play only when an injunction is sought 'upon the ground of the unconstitutionality' of a statute. There is no such ground when the constitutional issue presented is essentially fictitious."

Appellant's claim here that Section 202(3) of the New York Vehicle and Traffic Law is unconstitutional is wholly insubstantial, and his complaint was properly dismissed by the District Court.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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